

**DELAWARE  
DEPARTMENT OF NATURAL RESOURCES AND  
ENVIRONMENTAL CONTROL**

**DIVISION OF AIR & WASTE MANAGEMENT**

**SITE INVESTIGATION & RESTORATION BRANCH**

**HAZARDOUS SUBSTANCE CLEANUP ACT  
POLICY ON BROWNFIELDS GRANTS**

**November 2006**

**I. PURPOSE**

- (1) The purpose of this policy is for the Department of Natural Resources and Environmental Control (“DNREC” or the “Department”), Site Investigation and Restoration Branch (“SIRB”) to provide Brownfield Grant funding opportunities to assist any eligible party in paying “reasonable remedial costs incurred in responding to a hazardous substance remedy...” (7 Del. C. Section 9113(c)(4)). The monies are to be spent from the Hazardous Substance Cleanup Fund (the “Fund”) as established under the authority of the Hazardous Substance Cleanup Act (HSCA), 7 Del. C., Section 9113. The Department will seek to give preference to *brownfields redevelopment projects* with public benefit, such as affordable housing (e.g. for low to middle income buyers), LEED Certified Green Buildings and development consistent with smart growth principles including “Livable Delaware” goals.

**II. DEFINITIONS**

- (1) **Brownfield Redevelopment Project** means the redevelopment of vacant, abandoned or underutilized property with one or more sources of known or perceived contamination. A project may include multiple parcels or multiple operable units and includes all the planned development such as office buildings, residential units, or commercial units shown on the conceptual site plans for the project. In addition, all projects entailing multiple parcels, or projects that divide a single parcel into operable units (OUs) or HSCA identification numbers, are to be considered a single project, eligible for one (1) funding allocation.
- (2) **Chronic Violator** means a facility or regulated party that is unable to maintain compliance or has engaged in a pattern of willful neglect or disregard with respect to the State’s environmental permits, laws, or regulations as administered by the Department, pursuant to 7 Del.C. Chapter 79 and the regulations promulgated thereto.
- (3) **Direct Pay Method** means once the costs are billed to a *Public Entity* or *Non-Profit* organization by a contractor or consultant, the Department

reimbursement will be sent directly to the contractor or consultant upon submission by the organization of a request for payment and copies of invoices with adequate detail to indicate eligible costs.

- (4) **Fiscal Year** means the State *fiscal year*, which runs from July 1 of a year through June 30 of the following year.
- (5) **LEED Certified Green Building** means a project that has conformed and been certified by the Leadership in Energy and Environmental Design (LEED) Green Building Rating Program. ([www.usgbc.org](http://www.usgbc.org))
- (6) **Non-Profit** means a 501(c)(3) corporation as defined in Title 26 of the United States Code (may include redevelopment authorities, community development corporations, churches, etc.).
- (7) **Public Entity** means a State Agency or body, county or local government or housing authority.

### III. AMOUNT

(1) There is authorized up to five million dollars (\$5,000,000) from the Fund in any *fiscal year* for the purpose of providing Brownfields Grant funding to eligible private and *public entities*. Of this amount, no more than two and one half million dollars (\$2,500,000) shall be used for the purpose of providing Brownfields Grant funding to either class of applicant.

(2) (a.) No more than one million dollars (\$1,000,000) may be allocated to any one *public entity* or *non-profit brownfields redevelopment project* and/or applicant in any single *fiscal year*. In addition, *public entity* or *non-profit brownfields redevelopment projects* other than affordable housing projects are limited to one million dollars (\$1,000,000) per project.

(b.) *Public Entity* and *non-profit* entities may opt for a direct-pay method rather than reimbursement for costs incurred for assessment, investigation, remedial activities or Department oversight charges. Private entities eligible for Brownfields Grant funding shall only be reimbursed for allowable environmental costs incurred up to the allowable amount per this policy.

(3) (a.) For Brownfields Grant funding to private parties, no more than two hundred twenty-five thousand dollars (\$225,000) may be reimbursed to any single private *brownfields redevelopment project* for costs incurred for assessment, investigation, remedial activities or Department oversight charges. Of this amount, the first potential one hundred twenty-five thousand dollars (\$125,000) being a dollar to dollar reimbursement, and the second potential one hundred thousand dollars (\$100,000) being a fifty cents to the dollar reimbursement;

(b.) No more than one million dollars (\$1,000,000) may be allocated to any one *private entity* in a single *fiscal year*.

#### IV. ELIGIBILITY FOR BROWNFIELD GRANTS

(1) Owners or prospective purchasers are eligible to apply for State brownfields grant funding for *Public* or *Non-Profit entities* under the following conditions:

1. The property must be certified as a Brownfields pursuant to Section 14.5 of *The Regulations Governing Hazardous Substance Cleanup*. Certification may be applied for in conjunction with the application for funding;
2. The applicant must be a non-profit corporation or public entity;
3. The applicant must affirmatively demonstrate that they/it did not cause or contribute to the actual release(s) of hazardous substances;
4. The applicant is in full compliance with all other environmental requirements in Delaware;
5. The applicant must not be a *chronic violator*; and
6. The applicant must not be subject to any current enforcement action from any State or Federal environmental agency unless such enforcement action is, in the opinion of the Secretary, adequately resolved with the applicable agency.

(2) Owners or prospective purchasers are eligible to apply for State Brownfields Grant funding for private entities under the following conditions:

1. The property must be certified as a Brownfields pursuant to Section 14.5 of *The Regulations Governing Hazardous Substance Cleanup*. Certification may be applied for in conjunction with the application for funding;
2. The applicant must certify that they/it did not cause or contribute to the actual release(s) of hazardous substance(s) and show due diligence was performed or is being performed;
3. The applicant is in full compliance with all other environmental requirements in Delaware;
4. The applicant must not be a *chronic violator*; and
5. The applicant must not be subject to any current enforcement action from any State or Federal environmental agency unless such enforcement action is, in the opinion of the Secretary, adequately resolved with the applicable agency.

#### V. USE OF FUNDS

(1) Monies awarded under the Brownfields Grant program must be used solely for environmental assessments, investigation, remedial activities approved by the Department, or for Department oversight charges. Approved and non-approved activities are detailed in the Brownfields Grant Guidance attached, **Attachment A**.

(2) The Brownfields Grant Guidance may be amended as needed by the Director of the Division of Air and Waste Management (DAWM) without prior approval by the Secretary.

## **VI. APPLICATION FOR FUNDING**

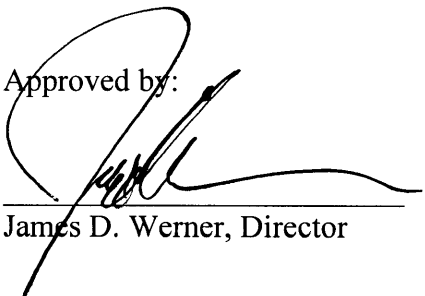
- (1) Funding shall be provided only to those parties who apply to the DNREC using the *Delaware Hazardous Substance Cleanup Act Joint Application for Brownfields Development Agreement and Brownfields Certification/Grant Funding*.
- (2) Funding shall be provided only to those applicants who have entered into a Brownfields Development Agreement (BDA) or Brownfields Voluntary Cleanup Program (BFVCP) Agreement pursuant to HSCA.
- (3) Upon request by the Secretary, or his designee, the applicant shall provide any and all documentation regarding all completed and ongoing environmental investigations of the property.

## **VII. MISCELLANEOUS**

- (1) The Secretary, or his designee, shall include the Brownfields Grant appropriations in the annual budget and provide 5-year projections of such expenditures from the Fund as directed by 7 Del. C., §§ 9104(c)(2) and (3).
- (2) Any Brownfields grant decision under this policy is in the sole, non-reviewable discretion of the Secretary or his designee.
- (3) All requests for payments from the Department for allowable reimbursement or direct pay costs shall be accompanied by a certificate from the qualified consultant stipulating that the costs are true and accurate to the best of their knowledge.
- (4) For the purposes of Brownfields Grant funding, all brownfields redevelopment projects entailing multiple parcels, or *brownfields redevelopment projects* that divide a single parcel into operable units (OUs) or HSCA identifiable numbers, are to be considered a single *brownfields redevelopment project*, eligible for one (1) funding allocation.
- (5) Brownfields Grant funding for either class of applicant will be made upon completion of the *brownfields redevelopment project* or in partial increments during the *brownfields redevelopment project*, of no less than ten thousand dollars (\$10,000), prior to the final payment.
- (6) Eligible grant funds unused by any Brownfields Grant approved entity within a single fiscal year shall not be carried over to the following fiscal year.

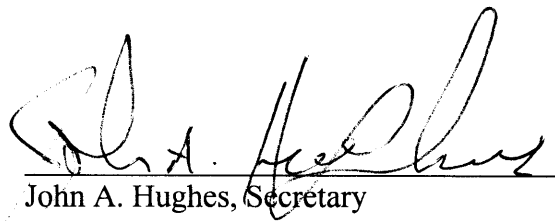
- (7) This Policy on Brownfields Grants supersedes the prior policy dated March 2004.

Approved by:



James D. Werner, Director

13 Nov 2006  
Date



John A. Hughes, Secretary

11-17-06  
Date

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## Attachment A: 2006 Brownfield Grant Policy

### Brownfields Grant Eligible Expenses Guidance

This Brownfields Grant Eligible Expenses List, as guidance for the "Hazardous Substance Cleanup Act Policy on Brownfield Grants", lists approved and non-approved environmental costs that may be reimbursed to a Brownfield developer or a party entering into a Brownfield Agreement with the Department. The approved and nonapproved activities listed in the spreadsheet are not intended to be all inclusive. Other costs may be approved by the Director of the Division of Air and Waste Management provided the expenses are in compliance with the Hazardous Substance Cleanup Act, the Regulations and guidance's issued under the Hazardous Substance Cleanup Act program and any additional Department cleanup programs such as Underground and Aboveground Storage tanks and Hazardous and Solid Waste.

#### ENVIRONMENTAL COSTS

**Environmental Costs:** Environmental Costs are defined as all necessary and reasonable expenses relating to addressing the Environmental Conditions on a Project including due diligence activities, investigation work, feasibility studies, treatability studies, remedial investigations and development and implementation of Final Plans of Remedial Action through to issuance of a COCR.

**Brownfield Grant Eligible Environmental Costs** as approved by DNREC are defined to include any expense for work which is required to perform a Brownfield assessment, a Site Investigation, a Remedy Evaluation, a Feasibility Study, a Proposed and Final Plan and the implementation of each and for which reimbursement is allowable pursuant to the HSCA statute, the HSCA Regulations and applicable guidances, policies or procedures. This Brownfields Grant Eligible Expense Spreadsheet delineates the expenses which are pre-approved by DNREC as grant eligible; provided, however that DNREC reserves the sole right to determine whether a work item properly fits within any of the categories of items on the Spreadsheet. The Brownfields Grant Eligible Expense Spreadsheet is not an exclusive list of Grant eligible Environmental Costs, but a list of pre-approved items to provide a level of assurance to all Parties regarding what costs will be covered and eligible for reimbursement. Additional items may be considered grant eligible if approved in writing by the Director of Air and Waste Management.

#### Environmental Consultant Fees

Draft and implement "Contaminated Materials and Water Management Plan" (CMWMP)
Draft and implement "Health and Safety Plan" (HASP) including personal protective equipment
Draft Proposed Plan of Remedial Action
Public Hearing preparation and support
Implement Final Plan of Remedial Action
Construction oversight regarding implementation of the HASP and CMWMP and Final Plan of Remedial Action
Administer and attend environmental construction coordination meetings
Waste material characterization and analytical testing
All Appropriate Inquiry reports including Phase I and II investigations

Soil, Water and Sediment sampling and analysis
Environmental Report Preparation
Asbestos Survey
Public outreach regarding environmental issues
Draft Operation & Maintenance Plan
Draft and submit "Remedial Action Completion Report" and all other material required by DNREC prior to issuance of a COCR
Mobilize equipment and personnel as necessary to perform environmental tasks
<b>DNREC</b>
DNREC oversight
<b>Removal, Transport and Dispose of Contaminated Materials</b>
Removal of Hazardous substances or hazardous waste remaining on site.
Removal of HSCA hazardous substances associated with impervious cover or ground level demolition as required as part of the Final Plan of Remedial Action
Removal and management of unimpacted overburden soil when excavating impacted material
Removal and management of impacted materials
Transport and treatment of impacted materials
Confirmatory sampling
Sheeting, shoring and dewatering of excavation to the extent defined in the "Dewatering" section below
Subsurface obstructions, if encountered during a HSCA Final Plan of Remedial Action required excavation, not otherwise required for construction
Subsurface obstructions found during construction excavation, if contaminated
Backfill over excavated contaminated material with select fill and compaction
Filling bottom of excavation and placement of geotextile fabric
Construction and maintenance of haul roads to transport fill for cap, if necessary due to site conditions and not otherwise required for construction
Transportation and disposal costs related to contaminated material removal
Surveyor costs incurred due to excavation of contaminated materials
Marker fabric as required by the Final Plans of Remedial Action
<b>Dewatering</b>
Dewatering if water encountered during a HSCA Final Plan of Remedial Action required excavation, not otherwise required for construction

Dewatering if contaminated water is encountered during construction excavation to the extent it exceeds requirements for handling uncontaminated water
FFAC tank rental for dewatering during excavation to the extent it exceeds requirements for handling uncontaminated water
<b>Erosion and Sediment Control</b>
Erosion and Sediment controls - silt fence in excess of non-HSCA site requirements
Erosion and Sediment controls - other controls required in excess of non-HSCA site requirements
<b>Capping</b>
Fill - to the extent required by the Final Plan of Remedial Action as a remedy.
Impervious surfaces -(i.e. asphalt, concrete, etc.) to the extent specifically required as a remedy by the Final Plan of Remedial Action where fill is NOT considered a protective cap.
<b>Underground Storage Tanks</b>
Removal of known and unknown tanks and associated cost of disposal and remediation
<b>Vapor Barrier</b>
Vapor intrusion control system (i.e. barrier, venting system, ect.) as required by the Final Plan of Remedial Action
<b>Groundwater</b>
Abandonment of existing groundwater monitoring wells
Installation of new groundwater monitoring wells
<b>Misc. Labor and Equipment</b>
"Environmental Site Orientation and Training" for all site workers
Incremental cost of OSHA certified laborers where necessary due to Environmental Conditions
Site grading - only if it is part of an approved remedial plan
Guard Services provided security fencing is inadequate or environmental vandalism has occurred.
Capital expense items -(equipment, fixtures, and other tangible personal property of a non-consumable and non-expendable nature, the value or cost of which is \$1,000.00 or more and the normal expected life of which is one year or more)
a. Reimbursement of all capital expense items will be prorated based on the normal expected lifew of the item and the length of time the item was used for purposes eligible for reimbursement, but must not include any shown on previous reimbursement application;
b. Reimbursement of all leased capital expense items will be limited to the lease rate multiplied by the length of time the item was used. However, this amount must not exceed the amount calculated in a. above, unless operation, maintenance or other service agreements are included in the cost and are identified in the application; and
c. In the event a capital expense item fails during its normal expected life, the Department will, upon a demonstration that the item has no further useful life, reimburse the remaining unpaid balance of the item minus any salvage value provided such failure was not the result of abuse, misuse, neglect, or improper maintenance. Such payment must be made on the next scheduled reimbursement opportunity.



Non HSCA Reimbursable Environmental Costs are defined as necessary and reasonable Environmental Costs relating to addressing the Environmental Conditions which are Non HSCA Reimbursable.

Geotechnical sampling of fill required by the Final Plan of Remedial Action

Erosion and sediment controls required on all non-HSCA construction sites

Stormwater management plans and implementation required on all non-HSCA sites

Implementation of the Environmental Operation and Maintenance Plan after issuance of COCR.

Slab installation not required as part of the remedy by the Final Plan of Remedial Action

Building demolition unless otherwise required by the Final Plan of Remedial Action

  
James P. Werner, Director of Air and Waste Management